

No. 81939-4

IN THE WASHINGTON STATE SUPREME COURT

In re the Personal Restraint of:

JAMES EASTMOND ,

Petitioner.

SUPPLEMENTAL BRIEF IN SUPPORT OF
PERSONAL RESTRAINT PETITION

By:

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JAMES EASTMOND

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A. SUPPLEMENTAL STATEMENT OF THE CASE

In 2000 Eastmond was charged with one count of first-degree robbery and one count of first-degree burglary. Appendix 1 to PRP, Amended Information filed August 14, 2000. As to each count, the Amended Information stated: "in the commission of said crime and in immediate flight therefrom, the defendant or an accomplice was armed with a deadly weapon; and that at the time of the commission of the crime, the defendant or an accomplice was armed with a firearm, as provided and defined in RCW 9.94A.310, RCW 9.94A.41.010, and RCW 9.94A.125."

Id.

The jury instructions told the jury that:

The term "deadly weapon" includes any firearm, whether loaded or not.

Appendix 3 to PRP, Instruction 12.

For purposes of a special verdict the State must prove beyond a reasonable doubt that the defendant was armed with a deadly weapon at the time of the commission of the crime in Counts I and II.

A pistol, revolver, or any other firearm is a deadly weapon whether loaded or unloaded.

Appendix 3 to PRP, Instruction 15.

The Special Verdict forms asked the jury to determine whether the defendant "was armed with a deadly weapon" at the time he committed

the offenses. Appendix 4 to PRP, Special Verdict Forms. The jury convicted Eastmond as charged and answered “yes” on the special verdict form questions.

B. SUPPLEMENTAL ARGUMENT

THE DECISION IN STATE V. WILLIAMS-WALKER, 167 WN. 2ND 889, 225, P.3RD 913 (2010) REQUIRES REVERSAL OF THE FIREARM ENHANCEMENTS IN THIS CASE.¹

The facts of the consolidated cases in *State v. Williams-Walker*, *supra*, are virtually identical to the facts in this case.

In each of the three cases here, the court submitted to the jury the special verdict form for a deadly weapon enhancement, not the form for a firearm enhancement, which was originally alleged, and the jury returned answers to those deadly weapon special verdict forms. In each case, the jury thus authorized only a deadly weapon enhancement, not the more severe firearm enhancement.

Id. at 888.

Based upon those facts, this Court found:

In the cases before us, the juries were given special verdict forms for a deadly weapon enhancement, and they returned answers in the affirmative. The fact that the State provided notice in the information to each of the defendants that it would seek a firearm enhancement does not control in cases where a deadly weapon special verdict form is submitted to the jury. When the jury is instructed on a

¹ Because the decision in *State v. Mandanas*, 168 Wn. 2nd 84, 228 P. 3rd 113 (2010) does not require reversal, Eastmond withdraws any request for review based upon that case.

specific enhancement and makes its finding, the sentencing judge is bound by the jury's finding.

Id. at 889. This Court also held that because the trial courts' errors occurred after the jury verdicts were reached, the harmless error doctrine does not apply. *Id.* at 900.

This Court's decision *Williams-Walker* requires reversal of the firearm enhancements in this case.

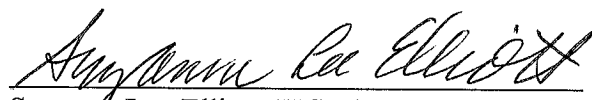
Eastmond was detained on these charges beginning May 22, 2000. The court imposed 36 months for the underlying substantive offenses and 120 months for the firearms' enhancements, for a total of 156 months. The proper sentence is 36 months plus 48 months (Former RCW 9.9A.310(4)), for a total of 84 months. Because Mr. Eastmond has served 123 months, he should be released now.²

C. CONCLUSION

This Court should grant review, summarily reverse, order Eastmond's immediate release and remand to the trial court for resentencing.

Respectfully submitted this 2nd day of August, 2010.

² In early July, Mr. Eastmond suffered serious of very damaging seizures. He was moved to an outside hospital for 3 weeks. He has recovered somewhat from his seizures and has been returned to the prison.


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Certificate of Service by Mail

I declare under penalty of perjury that on August 2, 2010, I placed a copy of this document in the U.S. Mail, postage prepaid, to Mr. Thomas Curtis, 3000 Rockefeller Everett, WA 98201-4060 and to Mr. James Eastmond, #821591, Monroe C.C. P.O. Box 777, Monroe, WA 98272.

Angenne Lee Elliott

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